

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1056 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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PAPER PRODUCTS LIMITED

Versus

GITA TEA TRADING CO.

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Appearance:

MR PV NANAVATI for Petitioner

MR SUNIT S SHAH for Respondent

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 08/09/1999

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act at the instance of the original defendant tenant, who was sued by the respondent plaintiff-landlord for a decree of eviction under the provisions of the Bombay Rent Act. In such revision the jurisdiction of this court is extremely limited. The Supreme Court has laid down the scope and powers of the High Court while

entertaining such revisions under section 29(2) of the Bombay Rent Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. Vs. Patel Mohanlal Muljibhai (1998(2) GLH 736) = AIR 1998 SC 3325), while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri (AIR 1987 SC 1782), held that High Court cannot function as a court of appeal, cannot reappraise the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

2. The only salient facts require to be noted here are that the plaintiff landlord had sued for a decree of eviction against his tenant on a number of grounds, which suit was dismissed by the trial court on all the grounds. One of the grounds introduced by an amendment of the plaint before the trial court was that the defendant tenant had changed the user of the premises, that the same would, therefore, amount to breach of the terms and conditions of the tenancy, which would violate the provisions of section 12(1) of the Bombay Rent Act, and would also entitle the landlord to a decree under section 13(1)(a) of the said Act.

3. Section 13(1)(a) stands *pari materia* with the provisions of section 12(1), while specifically contemplating a specific case of breach of provisions of clause (o) of section 108 of Transfer of Property Act, 1882.

4. On the dismissal of the suit including the ground referred to herein viz. "change of user", the landlord preferred an appeal under section 29(1) of the Bombay Rent Act which was allowed. Hence the present revision at the instance of the original tenant-defendant.

5. The only question urged before me, and which requires to be considered is whether the tenant has changed the user of the premises from the purpose for which it was let out.

6. The lower appellate court, after discussing the evidence in detail, has come to the conclusion that the tenant has in fact changed the user of the premises from

the purposes for which they were let out.

7. With a view to satisfy the conscience of the court, I have reexamined clause 7 of the lease agreement which specifically contemplates as under:

"7. The licensee will use the premises as godown to store the goods of the company and its sister concerns."

On a plain reading thereof it becomes obvious that the purpose of letting was to use the premises firstly as a "godown", and that the "godown" was to be used to "store the goods of the company ....". It is found on facts, and it is conceded by the petitioner tenant even before me, that the premises were used as "office" premises, obviously they were not being used as a "godown", and obviously were not being used to "store the goods of the company".

8. Learned counsel for the petitioner sought to urge that even if it be presumed that the premises were let out for use as a "godown", it should be interpreted to mean that the permitted user was for business purposes, and that business purposes would obviously include the use of the premises as an "office". This is a farfetched and trite submission which deserves to be rejected outright for the simple reason that if the parties intended to permit use of the premises as "office premises", the lease agreement would have said so in plain terms. As already discussed hereinabove, the lease agreement contemplates the specific use of the property specifically for a godown, and not for any other cognate or allied purpose which could generally be deemed to be a business purpose.

9. Similarly another contention sought to be raised is to the effect that the use of the premises is not restricted only to the godown and that therefore allied or cognate purpose would be permissible. This again is a submission which cannot be accepted for the simple reason that the parties have set out their mutual obligations under the said lease agreement, and we must deal with and interpret the same as they are found. It is not open for the learned counsel for the petitioner to contend, nor for this court to hold, that the use of the premises would be restricted to a godown, only if the word "only" had been used immediately preceding the word "godown". Had the word "only" been used before the word "godown", it would have only emphasised the restrictive user of the premises for the purpose of the godown. This, however,

does not mean that the absence of the word "only" would enable the court to interpret the word "godown" in a generic sense, to treat the premises as having been let out for business purposes in general, and then to hold that the use of the premises for office purposes would also amount to using them for business purposes, and therefore within the permitted range of the user.

10. Another contention sought to be raised was to the effect that the petitioner tenant has not converted the entire godown to the office, but the office is only situated in part of the premises let out. According to the learned counsel for the petitioner, therefore, the entire premises let out have not been subjected to change of user. This, however, is also a misleading submission, and it cannot be urged that the premises let out can be said to be subjected to change of user, only if the user of the entire premises is changed. It goes without saying that even if the part of the leased premises is subjected to change of user, there would be a breach of the terms and conditions of the tenancy, and it matters not whether such breach of terms and conditions of the tenancy pertains to the entire premises or part of the premises. Obviously the restrictive use of the leased premises as a "godown" applies to the entire premises leased out, and even if part of such premises is used for non permissible purposes, there would be a breach of the terms and conditions of the tenancy.

11. In my opinion, therefore, the view taken by the lower appellate court is amply justified and therefore requires to be upheld. There is no substance in the present revision and the same is, therefore, dismissed.

08.09.1999 (Y.B. BHATT J.)